

HOUSE BILL No. 1389

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-12-3.7; IC 33-37-8; IC 33-39-1-8; IC 34-30-2-148.6; IC 35-31.5-2-68.5; IC 35-36-12.

Synopsis: Crimes and persons with intellectual disabilities. Defines "intellectual disability" and permits a person with an intellectual disability to participate in a forensic diversion program. Authorizes a prosecuting attorney to require a person participating in a prosecutorial diversion program to receive mental health treatment to reduce recidivism, and permits diversion and deferral fees to be used to fund mental health treatment programs to reduce recidivism. Permits a criminal court to appoint a court appointed special advocate to assist a person with an intellectual disability who is charged with a criminal offense.

Effective: July 1, 2015.

McNamara, Mahan

January 14, 2015, read first time and referred to Committee on Courts and Criminal Code.



First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1389

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 11-12-3.7-4, AS AMENDED BY P.L.192-2007,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 4. As used in this chapter, "forensic diversion
4 program" means a program designed to provide an adult:
5 (1) who has **an intellectual disability**, a mental illness, an
6 addictive disorder, or ~~both a mental illness and an addictive~~
7 ~~disorder; a combination of those conditions;~~ and
8 (2) who has been charged with a crime that is not a violent
9 offense;
10 an opportunity to receive community treatment and other services
11 addressing mental health and addiction instead of or in addition to
12 incarceration.
13 SECTION 2. IC 11-12-3.7-4.5 IS ADDED TO THE INDIANA
14 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2015]: **Sec. 4.5. As used in this chapter,**



"intellectual disability" means a disability characterized by significant limitations in:

- (1) intellectual functioning; and
- (2) adaptive behavior;

that originated before the person became eighteen (18) years of age.

SECTION 3. IC 11-12-3.7-7, AS AMENDED BY P.L.2-2014, SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 7. (a) An advisory board shall develop a forensic diversion plan to provide an adult who:

- (1) has **an intellectual disability**, a mental illness, an addictive disorder, or ~~both a mental illness and an addictive disorder~~; **a combination of those conditions**; and

- (2) has been charged with a crime that is not a violent crime;

an opportunity, pre-conviction or post-conviction, to receive community treatment and other services addressing **intellectual disabilities**, mental health, and addictions instead of or in addition to incarceration.

(b) The forensic diversion plan may include any combination of the following program components:

- (1) Pre-conviction diversion for adults with mental illness.
- (2) Pre-conviction diversion for adults with addictive disorders.
- (3) Pre-conviction diversion for adults with intellectual disabilities.**
- ~~(3)~~ **(4)** Post-conviction diversion for adults with mental illness.
- ~~(4)~~ **(5)** Post-conviction diversion for adults with addictive disorders.
- (6) Post-conviction diversion for adults with intellectual disabilities.**

(c) In developing a plan, the advisory board must consider the ability of existing programs and resources within the community, including:

- (1) a problem solving court established under IC 33-23-16;
- (2) a court alcohol and drug program certified under IC 12-23-14-13;
- (3) treatment providers certified by the division of mental health and addiction under IC 12-23-1-6 or IC 12-21-2-3(5); and
- (4) other public and private agencies.

(d) Development of a forensic diversion program plan under this chapter or IC 11-12-2-3 does not require implementation of a forensic diversion program.

(e) The advisory board may:



- 1 (1) operate the program;
- 2 (2) contract with existing public or private agencies to operate one
- 3 (1) or more components of the program; or
- 4 (3) take any combination of actions under subdivisions (1) or (2).
- 5 (f) Any treatment services provided under the forensic diversion
- 6 program:
- 7 (1) for addictions must be provided by an entity that is certified by
- 8 the division of mental health and addiction under IC 12-23-1-6;
- 9 or
- 10 (2) for mental health must be provided by an entity that is:
- 11 (A) certified by the division of mental health and addiction
- 12 under IC 12-21-2-3(5);
- 13 (B) accredited by an accrediting body approved by the division
- 14 of mental health and addiction; or
- 15 (C) licensed to provide mental health services under IC 25.
- 16 SECTION 4. IC 11-12-3.7-11, AS AMENDED BY P.L.168-2014,
- 17 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 18 JULY 1, 2015]: Sec. 11. (a) A person is eligible to participate in a
- 19 pre-conviction forensic diversion program only if the person meets the
- 20 following criteria:
- 21 (1) The person has **an intellectual disability**, a mental illness, a
- 22 addictive disorder, or ~~both a mental illness and an addictive~~
- 23 ~~disorder.~~ **a combination of those conditions.**
- 24 (2) The person has been charged with an offense that is:
- 25 (A) not a violent offense; and
- 26 (B) a Class A, B, or C misdemeanor, or a Level 6 felony that
- 27 may be reduced to a Class A misdemeanor in accordance with
- 28 IC 35-50-2-7.
- 29 (3) The person does not have a conviction for a violent offense in
- 30 the previous ten (10) years.
- 31 (4) The court has determined that the person is an appropriate
- 32 candidate to participate in a pre-conviction forensic diversion
- 33 program.
- 34 (5) The person has been accepted into a pre-conviction forensic
- 35 diversion program.
- 36 (b) Before an eligible person is permitted to participate in a
- 37 pre-conviction forensic diversion program, the court shall advise the
- 38 person of the following:
- 39 (1) Before the individual is permitted to participate in the
- 40 program, the individual will be required to enter a guilty plea to
- 41 the offense with which the individual has been charged.
- 42 (2) The court will stay entry of the judgment of conviction during



the time in which the individual is successfully participating in the program. If the individual stops successfully participating in the program, or does not successfully complete the program, the court will lift its stay, enter a judgment of conviction, and sentence the individual accordingly.

(3) If the individual participates in the program, the individual may be required to remain in the program for a period not to exceed three (3) years.

(4) During treatment the individual may be confined in an institution, be released for treatment in the community, receive supervised aftercare in the community, or may be required to receive a combination of these alternatives.

(5) If the individual successfully completes the forensic diversion program, the court will waive entry of the judgment of conviction and dismiss the charges.

(6) The court shall determine, after considering a report from the forensic diversion program, whether the individual is successfully participating in or has successfully completed the program.

(c) Before an eligible person may participate in a pre-conviction forensic diversion program, the person must plead guilty to the offense with which the person is charged.

(d) Before an eligible person may be admitted to a facility under the control of the division of mental health and addiction, the individual must be committed to the facility under IC 12-26.

(e) After the person has pleaded guilty, the court shall stay entry of judgment of conviction and place the person in the pre-conviction forensic diversion program for not more than:

(1) two (2) years, if the person has been charged with a misdemeanor; or

(2) three (3) years, if the person has been charged with a felony.

(f) If, after considering the report of the forensic diversion program, the court determines that the person has:

(1) failed to successfully participate in the forensic diversion program, or failed to successfully complete the program, the court shall lift its stay, enter judgment of conviction, and sentence the person accordingly; or

(2) successfully completed the forensic diversion program, the court shall waive entry of the judgment of conviction and dismiss the charges.

SECTION 5. IC 11-12-3.7-12, AS AMENDED BY P.L.192-2007, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 12. (a) A person is eligible to participate in a



post-conviction forensic diversion program only if the person meets the following criteria:

(1) The person has **an intellectual disability**, a mental illness, an addictive disorder, or ~~both a mental illness and an addictive disorder~~; **a combination of those conditions**.

(2) The person has been convicted of an offense that is:

(A) not a violent offense; and

(B) not a drug dealing offense.

(3) The person does not have a conviction for a violent offense in the previous ten (10) years.

(4) The court has determined that the person is an appropriate candidate to participate in a post-conviction forensic diversion program.

(5) The person has been accepted into a post-conviction forensic diversion program.

(b) If the person meets the eligibility criteria described in subsection (a) and has been convicted of an offense that may be suspended, the court may:

(1) suspend all or a portion of the person's sentence;

(2) place the person on probation for the suspended portion of the person's sentence; and

(3) require as a condition of probation that the person successfully participate in and successfully complete the post-conviction forensic diversion program.

(c) If the person meets the eligibility criteria described in subsection (a) and has been convicted of an offense that is nonsuspendible, the court may:

(1) order the execution of the nonsuspendible sentence; and

(2) stay execution of all or part of the nonsuspendible portion of the sentence pending the person's successful participation in and successful completion of the post-conviction forensic diversion program.

The court shall treat the suspendible portion of a nonsuspendible sentence in accordance with subsection (b).

(d) The person may be required to participate in the post-conviction forensic diversion program for no more than:

(1) two (2) years, if the person has been charged with a misdemeanor; or

(2) three (3) years, if the person has been charged with a felony.

The time periods described in this section only limit the amount of time a person may spend in the forensic diversion program and do not limit the amount of time a person may be placed on probation.



(e) If, after considering the report of the forensic diversion program, the court determines that a person convicted of an offense that may be suspended has failed to successfully participate in the forensic diversion program, or has failed to successfully complete the program, the court may do any of the following:

- (1) Revoke the person's probation.
- (2) Order all or a portion of the person's suspended sentence to be executed.
- (3) Modify the person's sentence.
- (4) Order the person to serve all or a portion of the person's suspended sentence in:
 - (A) a work release program established by the department under IC 11-10-8 or IC 11-10-10; or
 - (B) a county work release program under IC 11-12-5.

(f) If, after considering the report of the forensic diversion program, the court determines that a person convicted of a nonsuspendible offense failed to successfully participate in the forensic diversion, or failed to successfully complete the program, the court may do any of the following:

- (1) Lift its stay of execution of the nonsuspendible portion of the sentence and remand the person to the department.
- (2) Order the person to serve all or a portion of the nonsuspendible portion of the sentence that is stayed in:
 - (A) a work release program established by the department under IC 11-10-8 or IC 11-10-10; or
 - (B) a county work release program under IC 11-12-5.
- (3) Modify the person's sentence.

However, if the person failed to successfully participate in the forensic diversion program, or failed to successfully complete the program while serving the suspendible portion of a nonsuspendible sentence, the court may treat the suspendible portion of the sentence in accordance with subsection (e).

(g) If, after considering the report of the forensic diversion program, the court determines that a person convicted of a nonsuspendible offense has successfully completed the program, the court shall waive execution of the nonsuspendible portion of the person's sentence.

SECTION 6. IC 33-37-8-4, AS AMENDED BY P.L.229-2011, SECTION 263, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. (a) Except as provided in subsection (b), upon receipt of monthly claims submitted on oath to the fiscal body by a program listed in section 3(b) of this chapter, the fiscal body of the city or town shall appropriate from the city or town fund to



the program the amount collected for the program fee under IC 33-37-5.

(b) Funds derived from a deferral program or a pretrial diversion program may be disbursed only by the adoption of an ordinance appropriating the funds for one (1) or more of the following purposes:

- (1) Personnel expenses related to the operation of the program.
- (2) Special training for:
 - (A) a prosecuting attorney;
 - (B) a deputy prosecuting attorney;
 - (C) support staff for a prosecuting attorney or deputy prosecuting attorney; or
 - (D) a law enforcement officer.
- (3) Employment of a deputy prosecutor or prosecutorial support staff.
- (4) Victim assistance.
- (5) Electronic legal research.
- (6) Office equipment, including computers, computer software, communication devices, office machinery, furnishings, and office supplies.
- (7) Expenses of a criminal investigation and prosecution.
- (8) An activity or program operated by the prosecuting attorney that is intended to reduce or prevent criminal activity, including:
 - (A) substance abuse;
 - (B) child abuse;
 - (C) domestic violence;
 - (D) operating while intoxicated; and
 - (E) juvenile delinquency.
- (9) The provision of evidence based mental health and addiction forensic treatment services to reduce the risk of recidivism in a program administered or coordinated by a provider certified by the division of mental health and addiction with expertise in providing evidence based forensic treatment services.**
- ~~(9)~~ **(10)** Any other purpose that benefits the office of the prosecuting attorney or law enforcement and that is agreed upon by the county fiscal body and the prosecuting attorney.

(c) Funds described in subsection (b) may be used only in accordance with guidelines adopted by the prosecuting attorneys council under IC 33-39-8-5.

SECTION 7. IC 33-37-8-6, AS AMENDED BY P.L.229-2011, SECTION 264, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6. (a) Except as provided in



subsubsection (b), upon receipt of monthly claims submitted on oath to the fiscal body by a program listed in section 5(b) of this chapter, the county fiscal body shall appropriate from the county fund to the program or fund the amount collected for the program under IC 33-37-5.

(b) Funds derived from a deferral program or a pretrial diversion program may be disbursed only by the adoption of an ordinance appropriating the funds for one (1) or more of the following purposes:

- (1) Personnel expenses related to the operation of the program.
- (2) Special training for:
 - (A) a prosecuting attorney;
 - (B) a deputy prosecuting attorney;
 - (C) support staff for a prosecuting attorney or deputy prosecuting attorney; or
 - (D) a law enforcement officer.
- (3) Employment of a deputy prosecutor or prosecutorial support staff.
- (4) Victim assistance.
- (5) Electronic legal research.
- (6) Office equipment, including computers, computer software, communication devices, office machinery, furnishings, and office supplies.
- (7) Expenses of a criminal investigation and prosecution.
- (8) An activity or program operated by the prosecuting attorney that is intended to reduce or prevent criminal activity, including:
 - (A) substance abuse;
 - (B) child abuse;
 - (C) domestic violence;
 - (D) operating while intoxicated; and
 - (E) juvenile delinquency.

(9) The provision of evidence based mental health and addiction forensic treatment services to reduce the risk of recidivism in a program administered or coordinated by a provider certified by the division of mental health and addiction with expertise in providing evidence based forensic treatment services.

~~(9)~~ **(10)** Any other purpose that benefits the office of the prosecuting attorney or law enforcement and that is agreed upon by the county fiscal body and the prosecuting attorney.

(c) Funds described in subsection (b) may be used only in accordance with guidelines adopted by the prosecuting attorneys council under IC 33-39-8-5.



SECTION 8. IC 33-39-1-8, AS AMENDED BY P.L.168-2014, SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 8. (a) After June 30, 2005, this section does not apply to a person who:

- (1) holds a commercial driver's license; and
- (2) has been charged with an offense involving the operation of a motor vehicle in accordance with the federal Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106-159.113 Stat. 1748).

(b) This section does not apply to a person arrested for or charged with:

- (1) an offense under IC 9-30-5-1 through IC 9-30-5-5; or
- (2) if a person was arrested or charged with an offense under IC 9-30-5-1 through IC 9-30-5-5, an offense involving:
 - (A) intoxication; or
 - (B) the operation of a vehicle;

if the offense involving intoxication or the operation of a vehicle was part of the same episode of criminal conduct as the offense under IC 9-30-5-1 through IC 9-30-5-5.

(c) This section does not apply to a person:

- (1) who is arrested for or charged with an offense under:
 - (A) IC 7.1-5-7-7, if the alleged offense occurred while the person was operating a motor vehicle;
 - (B) IC 9-30-4-8(a), if the alleged offense occurred while the person was operating a motor vehicle;
 - (C) IC 35-44.1-2-13(b)(1); or
 - (D) IC 35-43-1-2(a), if the alleged offense occurred while the person was operating a motor vehicle; and
- (2) who held a probationary license (as defined in IC 9-24-11-3.3(b)) and was less than eighteen (18) years of age at the time of the alleged offense.

(d) A prosecuting attorney may withhold prosecution against an accused person if:

- (1) the person is charged with a misdemeanor, a Level 6 felony, or a Level 5 felony;
- (2) the person agrees to conditions of a pretrial diversion program offered by the prosecuting attorney;
- (3) the terms of the agreement are recorded in an instrument signed by the person and the prosecuting attorney and filed in the court in which the charge is pending; and
- (4) the prosecuting attorney electronically transmits information required by the prosecuting attorneys council concerning the



1 withheld prosecution to the prosecuting attorneys council, in a
 2 manner and format designated by the prosecuting attorneys
 3 council.

4 (e) An agreement under subsection (d) may include conditions that
 5 the person:

6 (1) pay to the clerk of the court an initial user's fee and monthly
 7 user's fees in the amounts specified in IC 33-37-4-1;

8 (2) work faithfully at a suitable employment or faithfully pursue
 9 a course of study or career and technical education that will equip
 10 the person for suitable employment;

11 (3) undergo available medical treatment or counseling and remain
 12 in a specified facility required for that purpose;

13 **(4) receive evidence based mental health and addiction**
 14 **forensic treatment services to reduce the risk of recidivism;**

15 ~~(4)~~ (5) support the person's dependents and meet other family
 16 responsibilities;

17 ~~(5)~~ (6) make restitution or reparation to the victim of the crime for
 18 the damage or injury that was sustained;

19 ~~(6)~~ (7) refrain from harassing, intimidating, threatening, or having
 20 any direct or indirect contact with the victim or a witness;

21 ~~(7)~~ (8) report to the prosecuting attorney at reasonable times;

22 ~~(8)~~ (9) answer all reasonable inquiries by the prosecuting attorney
 23 and promptly notify the prosecuting attorney of any change in
 24 address or employment; and

25 ~~(9)~~ (10) participate in dispute resolution either under IC 34-57-3
 26 or a program established by the prosecuting attorney.

27 (f) An agreement under subsection (d)(2) may include other
 28 provisions reasonably related to the defendant's rehabilitation, if
 29 approved by the court.

30 (g) The prosecuting attorney shall notify the victim when
 31 prosecution is withheld under this section.

32 (h) All money collected by the clerk as user's fees under this section
 33 shall be deposited in the appropriate user fee fund under IC 33-37-8.

34 (i) If a court withholds prosecution under this section and the terms
 35 of the agreement contain conditions described in subsection ~~(e)(6)~~:
 36 **(e)(7):**

37 (1) the clerk of the court shall comply with IC 5-2-9; and

38 (2) the prosecuting attorney shall file a confidential form
 39 prescribed or approved by the division of state court
 40 administration with the clerk.

41 SECTION 9. IC 34-30-2-148.6 IS ADDED TO THE INDIANA
 42 CODE AS A NEW SECTION TO READ AS FOLLOWS



[EFFECTIVE JULY 1, 2015]: **Sec. 148.6. IC 35-36-12-7 (Concerning a court appointed special advocate, an employee of a county court appointed special advocate, or a volunteer for a court appointed special advocate program for good faith performance of duties relating to assistance of a person with an intellectual disability).**

SECTION 10. IC 35-31.5-2-68.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 68.5. "Court appointed special advocate" means a community volunteer who:**

(1) has completed a training program approved by the court that includes training in:

(A) the development of a person with an intellectual disability (as defined in IC 11-12-3.7-4.5); and

(B) evidence based treatment and counseling programs for a person with an intellectual disability;

(2) has been appointed by a court to assist a person with an intellectual disability who has been charged with a criminal offense; and

(3) may research, examine, advocate, facilitate, and monitor the situation of a person with an intellectual disability who has been charged with a criminal offense.

SECTION 11. IC 35-36-12 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

Chapter 12. Court Appointed Special Advocate for Persons With Intellectual Disabilities

Sec. 1. A court may appoint a court appointed special advocate at any time to assist a person with an intellectual disability who has been charged with a criminal offense.

Sec. 2. A court appointed special advocate shall assist the person with an intellectual disability to whom the advocate has been appointed.

Sec. 3. A court appointed special advocate may recommend to the court treatment programs and other services that may reduce recidivism and are available to the person with an intellectual disability.

Sec. 4. A court appointed special advocate serves until the court enters an order for removal.

Sec. 5. The court appointed special advocate is considered an officer of the court for the purpose of assisting the person with an intellectual disability.

Sec. 6. A court appointed special advocate appointed by a court



1 under this chapter may continue to assist the person with an
 2 intellectual disability while the person is undergoing treatment or
 3 serving the person's sentence, if applicable.

4 **Sec. 7. Except for gross misconduct:**

- 5 (1) a court appointed special advocate;
 6 (2) an employee of a county court appointed special advocate
 7 program; and
 8 (3) a volunteer for a court appointed special advocate
 9 program;

10 who performs in good faith duties relating to assistance of a person
 11 with an intellectual disability is immune from any civil liability that
 12 may occur as a result of that person's performance.

13 **Sec. 8. The court may order the person assisted by the court**
 14 **appointed special advocate to pay a user fee to the:**

- 15 (1) court appointed special advocate program; or
 16 (2) individual who served as a court appointed special
 17 advocate;

18 for the services provided under this chapter.

19 **Sec. 9. The court shall establish one (1) of the following**
 20 **procedures to be used to collect the user fee:**

- 21 (1) The court may order the person with the intellectual
 22 disability to pay the user fee to the court appointed special
 23 advocate program that provided the services.
 24 (2) The court may order the person with the intellectual
 25 disability to pay the user fee to the individual court appointed
 26 special advocate that provided the services.

27 **Sec. 10. If the court orders the person with the intellectual**
 28 **disability to pay a user fee under this chapter, the program or the**
 29 **individual shall report to the court the receipt of payment not later**
 30 **than thirty (30) days after receiving the payment.**

